



Paper No. 17

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**MAILED**

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**Technology Center 2600**

In re Application of :  
Richard P. Mettke  
Application No. 09/134,831  
Filed: August 17, 1998  
For: ON-LINE COMMUNICATION  
TERMINAL/APPARATUS

DECISION ON PETITION TO  
WITHDRAW HOLDING OF  
ABANDONMENT

This is a decision on the petition filed April 17, 2000, to withdraw the holding of abandonment of the above-identified application.

The application was held abandoned for failure to respond in a timely manner to the nonfinal Office action mailed on August 25, 1999. A Notice of Abandonment was mailed on April 4, 2000.

Petitioner asserts that a proper response was in fact timely filed in the form of an amendment. In support of the petition, petitioner submitted a copy of a date-stamped post card receipt acknowledging receipt of the amendment in the United States Patent and Trademark Office on November 29, 1999. Petitioner submitted a copy of the amendment with the present petition.


The original response is not of record in the file and cannot be located. However, M.P.E.P. § 503 states, "[a] post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO." Accordingly, it is concluded that the amendment was received in the Office but were not matched with the application file.

The date-stamped on the post card of November 29, 1999, is after the due date for the response. However, under 37 C.F.R. § 1.8(a)(1) correspondence is considered timely if: (1) the correspondence is mailed or transmitted prior to expiration of the set period for response by being properly addressed to the Patent and Trademark Office as set out in 37 C.F.R. § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail or transmitted to the Patent and Trademark Office in accordance with 37 C.F.R. § 1.6(d); and (2) the correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have a reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

The amendment bears a proper certificate of mailing date of November 22, 1999 in compliance with the requirements of 37 C.F.R. § 1.8(a)(1) as set forth above. Accordingly, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The petition is **GRANTED**.

The application file will be forwarded to the Technology Center's technical support staff for entry of the amendment. Thereafter, the application file will be forwarded to the examiner for action in due course.

  
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James L Dwyer, Director  
Technology Center 2600  
Communications